IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8005 OF 2003

Kanhayalal Motilal Talera ...Petitioner

Versus

Shantaram Sahadu Bhondwe & Ors. ...Respondents

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Mr. M.S. Jadmar, counsel for Petitioner

Mr. Anurag Jain with J.B. Kocheta counsel for Respondent No.1.

Mr. R.A. Thorat, the counsel for Respondent No.2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 28TH MARCH, 2005

P. C.:-

1. Heard the learned counsel for the respective parties. This petition filed by the plaintiff impugns the order passed by the learned Joint C.J.S.D. at Pune on 28.11.2002.

2. Rule. The respondent waives service. By consent, rule is taken up for hearing forthwith.

3. Special Civil Suit No. 952 of 1988 came to be filed for specific performance in respect of the sale transaction of the suit land, more particularly described in para 1 of the plaint, in favour of the plaintiff after obtaining or receiving the necessary

permission under Section 43 of the Bombay Tenancy and Agricultural Lands Act. The defendant Nos. 2 and 4 had filed their written statement on or about 15.6.1989. The defendant Nos. 2 to 6 are the sons of defendant No.1 and the defendant Nos. 7 and 8 are the sons of the elder brother of defendant No.1. In the written statement filed it was contended that the suit land was the self acquired property of defendant No.1. Surprisingly, the defendant No.3 who had filed his written statement at Exh.31 came up with an application at Exh.173 seeking amendment to his written statement under Order VI Rule 17 of the Code of Civil Procedure, 1908. By the said proposed amendment, it was sought to contend that the suit land was the ancestral property of defendant No.1, the trial Court allowed the same amendment in spite of resistance from the plaintiff.

4. Admittedly, the issues have been framed at Exh.35 by the trial court by its order dated 20.9.1997 and the issue No.4 reads as under:-

> " Whether the suit property is the self acquired property of defendant No.1 and his brother Kundalik."

5. After about 14 years, the defendant No.3 filed an application for amendment changing his pleading that the suit property was the ancestral property rather than it being the self acquired property of defendant No.1 and his brother Kundalik. No issue has been framed to that effect, and entirly new case was sought to be made. If this amendment as allowed by the trial Court is to be accepted, the mothers of defendant Nos. 2 to 6 and 7 and 8 as well as their sisters (whether married or unmarried) will have to be brought on record at this belated stage and the nature of entire suit would change. The reasoning given by the trial court in allowing the amendment application does not commend to this Court. The trial court observed that the proposed amendment will not change the nature of suit nor will it prejudice the plaintiff, more so because the agreement of sale was between the plaintiff and defendant No.1 and right of defendant No.1 will be available to the plaintiff. The trial Court fell in gross error in allowing the application on the basis of such reasoning. The right of the plaintiff in prosecuting the suit will be seriously affected and jeopardised if the amendment is allowed.

6. Hence, this petition must succeed and is hereby allowed. The impugned order dated 28.11.2002 passed below Exh.173 in Special Civil Suit No. 952 of 1988

is hereby quashed and set aside. The trial of the Special Civil Suit No. 952 of 1988 shall be expedited and it is directed that same suit shall be heard and decided within a period of six months from the receipt of writ by the trial Court.

7. Rule made absolute accordingly with no order as to costs. Interim relief, if any, stands vacated.

8. Writ to go forthwith.